IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2002

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THE HONOURABLE MR. JUSTICE V. KANAGARAJ

Writ Petition No. 19046 of 2001
and
WMP No. 28023 of 2001

K. Arumugam
Sirukoodalpatti Post,
Thirupathur Taluk,
Sivaganga District. .. Petitioner

Vs.

Union of India,
rep. by its Secretary,
Ministry of Home Affairs,
Grigh Mantralaya,
New Delhi. .. Respondents

Petition filed under Article 226 of Constitution of India to
issue a Writ of Mandamus as stated therein.

For Petitioner : Mr. S. Muthukumar

For Respondents : Mr. K. Rajendran
S.C.G.S.C.

:ORDER
Petitioner has filed this writ petition praying to issue a
Writ of Mandamus directing the respondent to grant Freedom Fighter's pension
to the petitioner in accordance with Swathanthra Sainik Samman Pension Rules.

2. From the facts and circumstances of the case as traced
from the affidavit filed in support of the writ petition what comes to be
known is that the petitioner was in the Indian National Army as a Sepoy at
Gaughsala Training Camp till the war was over and returned to India in the
year 1946 with the help of INA Relief Committee; that the petitioner was in
the INA for nearly about three years and suffered political imprisonment; that
the All India Congress Committee granted a certificate dated 7.8.1968
certifying that the petitioner was a member of INA and a political sufferer;
that the INA at Madras has granted the INA Personnel History Sheet; that the
State Government recognised his service and granted pension vide

F.F.P.O.No.2806/68, dated 8.11.1968; that even today the petitioner is receiving the State Government Freedom Fighter's Pension; that the petitioner applied for grant of Central Government Pension under the Swatantra Sainik Samman Pension Scheme 1972 by his application dated 24.7.1972 to the respondent and a representation was also made on 11.9.1991 but there is no reply and hence this writ petition.

3. In the counter filed by the respondent, it is stated that INA comprised of personnel who joined from British India Army and had taken oath of allegiance to the crown and others, who were recruited locally were called civilians; that the petitioner's claim is that he was a civilian; that after the defeat of Japan, the Allied Forces took over the camps where INA Personnel were stationed; that in the camps the segregation took place in which those who were from British Indian Army were taken prisoners as they had acted against their oath of allegiance but the civilians had not been taken

and they were not detained or imprisoned by the Allied Forces and according to information available with the respondent, no civilian was detained or imprisoned.

4. It is further stated that the petitioner in his application dated 24.7.1972, he had not claimed any imprisonment/detention while he participated in the activities of INA; that in his subsequent application only he claimed imprisonment of two weeks; that according to the SSSP Scheme, an eligibility criteria for pension is a minimum of six months imprisonment and therefore the petitioner was not eligible for pension which was informed vide letter dated 13.12.1973; that the State Government and the Tamil Nadu INA Forum did not recommend his claim for SSS Pension; that the petitioner again made a representation dated 14.9.1975 with the certificate from Shri V. Ayyavoo certifying that the petitioner was an ex-INA member and remained underground with him from May 1945 to April 1946; that under the said scheme remaining underground is not accepted for pension; that since the certifier had not indicated his own claim nor given any proof of his one year jail suffering and therefore his certificate was not accepted; that the petitioner was informed about the rejection of his claim vide letter dated 16.9.1978.

5. It is further stated that the petitioner had not furnished his birth certificate or educational certificate to ascertain his actual age to determine whether he was adult and had actually participated in the activities of INA; that the certificate issued by All India INA Committee of Tamil Nadu INA Forum only indicated his association but not certified his imprisonment and therefore it cannot be accepted for grant of SSS pension; that the award of pension by the State Government does not ipso facto entitle for SSS Pension; that the petitioner's claim does not fulfill the prescribed criteria to become eligible for SSS Pension and therefore it has been rejected.

6.During arguments, though the learned counsel appearing on behalf of the petitioner would stick to the facts pleaded, he would also rely on an earlier order passed by the Single Judge of this court reported in W.P.Nos.20799 of 1993 etc (Natarajan v. The Government of Tamilnadu) wherein it is held

"In the light of the entire scheme of the Act and Rules, I am unable to accept the stand of the Government that only on production of imprisonment certificate from the concerned authority, they may be sanctioned pension, grant or scholarship.
In the risk of repetition, I once again come to Clause (V of SubSec.(4) of Sec.4 of the Act. It enables the applicant either to place the documents of imprisonment or prove the sufferings by way of placing acceptable evidence. As observed earlier, in the absence of any details either in the Act or in the Rules the Government cannot expect the applicants to keep the imprisonment certificate for 30 to 40 years anticipating such legislation will be brought by the Government."
7..On the part of the learned Additional Government Pleader representing the respondent, he would strongly oppose the contentions of the petitioner. He would further submit that though the All India INA Committee of Tamil Nadu Forum indicated his association it did not, not certify his imprisonment and therefore it cannot be accepted for grant of SSS Pension.

8. In the above circumstances, relying on the following judgments reported in (1) GURDIAL SINGH vs.UNION OF INDIA AND OTHERS (2001)8 Supreme Court Cases 8 (2)I.V.K.MALAICHAMY (deceased)AND ANOTHER vs. THE GOVERNMENT OF INDIA & OTHERS (2001 Writ Law Reporter 549), this court has to arrive at decision so far as the issue concerned with the grant of Tamilnadu Scholar Pensions in favour of the petitioner is concerned. The relevant portion from the judgment cited first supra is as follows:
"The standard of proof required in ;such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by the scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of " beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."
The relevant portion from the judgment cited second supra is as follows:-

"Taking note of the spirit and substance of the certificate issued by the co-prisoner Sri P.Kakkan particularly when there is no averment in the counter affidavit filed ;by respondents 1 and 2 disbelieving the certificate as a whole, I am obliged to quash both the proceedings, namely, No.13/O/Mu/37917/89 dated 23.7.1990 by the third respondent and No.129/97/84/FF(S.2) dated 25.2.1984 by the first respondent with a direction to give the benefits of the scheme to the petitioner, who are legal heirs of V.K.Malaichamy (deceased)

freedom fighter, within three months from the date of receipt of a copy of this order."

9. Further, learned counsel for the petitioner would cite the judgment reported in R. THANGAVELU – Vs. - THE GOVERNMENT OF INDIA REP. BY ITS SECRETARY AND ANOTHER (1994, W.L.R. 137) wherein this Court has held that
" Having regard to the above laudable object and purpose behind the scheme it is not necessary that the appropriate Government should adopt a liberal approach in the matter of grant of pension to the real freedom fighters. When we say this, it does not mean that when a person makes a claim under the Scheme for pension, he should be granted the same as a matter of course. No doubt, the applicant should satisfy the conditions stipulated in the scheme."

10.Falling in line with the observations made by the Apex Court and by this Court in the judgments cited above, if a decision has to be arrived at by this court in the case in hand, it could be seen that the petitioner already knocked at the doors to consider the representation of the petitioner, but it seems that the respondents have not considered the representation of the petitioner in the manner that it has to be considered and therefore, even though normally the courts do not in such matters pass orders as it is prayed for in the writ petition, but only direct the authorities concerned to act upon the requirements of the petitioner in the circumstances of the case and the earlier acts of the respondent goes to show that they have not been appropriately dealt with in the manner expected by law, this court has to allow the above writ petition to its prayer and hence the following order:-
8.In result,
(i)the above writ petition is allowed.

(ii)The respondent is directed to sanction Freedom Fighter's Pension to the petitioner in accordance
V.KANAGARAJ,J.
with Swathanthra Sainik Samman Pension Rules, from the date of his application on 25.7.1972 within four weeks from the date on which a copy of this order is made ready.
(iii)However, in the circumstances of case, there shall be no order as to costs.
(iv) Consequently, WMP No. 28023 of 2001 is closed.
09 .04.2002
Index:yes
Internet:yes
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To
1.
The Secretary,
Union of India,
Ministry of Home Affairs,

Grigh Mantralaya,
New Delhi.

P.D. Order in
W.P.No.19046 of 2001